IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 27TH OCTOBER 2006 / 5TH KARTHIKA 1928

OP.No. 10394 of 1998(K)

PETITIONER:

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1. T.J.PHILIP, KUREEKATTIL HOUSE, KIDANGOOR, KOTTAYAM.

2. K.J.JOSEPH, .DO. .DO.

BY ADV. SRI.M.J.THOMAS

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE JOINT SECRETARY TO GOVT., LABOUR AND REHABILITATION(S) DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE CHIEF EXECUTIVE OFFICER, THE KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD, KOLLAM.

3. THE DISTRICT EXECUTIVE OFFICER, THE KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD, KOTTAYAM.

4. THE DEPUTY TAHSILDAR(REVENUE RECOVERY), TALUK OFFICE, PALA, KOTAYAM.

R2&3 BY ADV. SRI.P.RAMAKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.17778/1998 IN O.P. NO.10394/1998

DISMISSED:

27.10.2006 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF AGREEMENT BETWEEN PETITIONERS 1&2 DT.14.8.1992.

P2: TRUE COPY OF RECEIPT DT.22.9.92 ISSUED BY K.P.MATHEW TO 2ND PETITIONER.

P3: TRUE OCPY OF THE OBJECTION FILED BY 1ST PETITIONER TO R3 DT.16.2.96.

P4: TRUE COPY OF DETERMINATION ORDER DT.25.6.96 OF R3.

P5: TRUE COPY OF APPEAL MEMORANDUM FILED BY PETITIONERS BEFORE R1 DT.16.7.96.

P6: TRUE COPY OF DEMAND NOTICE OF R4 DT.10.10.1996.

P7: TRUE COPY OF STAY ORDER OF R1 DT.7.11.95.

P8: TRUE COPY OF ORDER OF R1 DT.16.10.97.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.10394 of 1998

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Dated this the 27th day of October, 2006.

JUDGMENT

The first petitioner is challenging recovery proceedings for recovery of arrears of Motor Transport Workers Welfare Fund due for 3/1994 to 11/1994. The first petitioner admits that he was in operation of the bus during this period of seven months. While the case of the petitioner is that the driver by name K.P.Mathew was not in his service, Standing Counsel submitted that there was inspection on 11.10.1994 when the vehicle was operated by the first petitioner and it was found that the said Mr.Mathew was the driver of the vehicle and he gave a statement to that effect. In the circumstances, I do not find any justification to interfere with the finding of fact based on enquiry which is confirmed in appeal. The O.P. is devoid of any merit and is dismissed. However, since petitioner has closed business after conducting service for short period, I feel complete interest can be waived provided petitioner clears the entire arrears on or before 31.1.2007. The petitioner should make payment to the third respondent directly and on production of receipt, RR should be closed. However, if petitioner commits

default in payment, then waiver of interest granted herein will stand vacated and respondents will proceed for recovery of entire arrears.

C.N.RAMACHANDRAN NAIR
Judge

pms